

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

NORTHERN MONTANA HOSPITAL
d/b/a NORTHERN MONTANA CARE
CENTER,

Plaintiff and Counterclaim
Defendant,

v.

FRANCIS C. ADAMS,

Defendant, Counterclaim
Plaintiff, and Third-Party
Plaintiff.

v.

UNITED STATES OF AMERICA,

Third-Party Defendant

CV-20-54-GF-BMM

AMENDED ORDER

Plaintiff, Northern Montana Hospital, d/b/a/ Northern Montana Care Center (NMCC), filed a motion to remand this case to state court pursuant to 28 U.S.C. § 1447(c). NMCC also requests an award of attorney's fees incurred as a result of removal.

Section 1446(a) of Title 28 of the United States Code requires a defendant wishing to remove a case from federal court to file a notice of removal “containing a short and plain statement of the grounds for removal.” Pursuant to 28 U.S.C. § 1446(b)(1), such notice must “be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.”

NMCC asserts that Adams is unable to point to an “amended pleading, motion, order or other paper” filed by NMCC which provides grounds for removal under 28 U.S.C. § 1446(b)(3). (Doc. 11 at 6-7). NMCC also asserts that Adams’s removal is untimely. (Doc. 11 at 7). Defendant and Counterclaim Plaintiff Francis Adams filed a response conceding that “[a]s NMCC asserts, pursuant to 28 USC §1446(b), Mr. Adams’ removal was untimely, and should be remanded for that reason alone.” (Doc. 13 at 3). Adams does, however, oppose the award of attorneys’ fees based on circumstances noted in his response. (Doc. 13 at 3-4).

The Court grants NMCC’s motion on the basis of Adams’s concession of untimeliness. The Court declines to award attorneys’ fees. *See* 28 U.S.C. § 1447(c) (“An order remanding the case *may* require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.”) (emphasis added).

Accordingly, **IT IS ORDERED:**

Plaintiff's Motion to Remand (Doc. 10) is **GRANTED** in regard to the original state court case Northern Montana Hospital, d/b/a Northern Montana Care Center v. Francis C. Adams, DV-20-026, with each party to bear its own costs and fees. The caption in this case should be amended as follows: FRANCIS C. ADAMS, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.

DATED this 20th day of August, 2020.

A handwritten signature in blue ink, reading "Brian Morris".

Brian Morris, Chief District Judge
United States District Court